

Assembly Bill No. 333

Passed the Assembly August 25, 2000

Chief Clerk of the Assembly

Passed the Senate August 23, 2000

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2000, at _____ o'clock ____M.

Private Secretary of the Governor

└

CHAPTER _____

An act to amend Sections 17003, 17200.8, and 17409.1 of, and to add Sections 17005.2, 17005.3, and 17403.5 to, the Financial Code, relating to Internet escrow transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 333, Papan. Internet escrow transactions.

The Escrow Law requires that any person who engages in business as an escrow agent, including an Internet escrow agent, as defined, within the state be licensed and regulated by the Commissioner of Corporations.

This bill would implement the following changes relating to activities conducted by Internet escrow companies: (1) expand escrow transactions to include those taking place on the Internet for the sale or transfer of personal property or services, (2) permit Internet escrow transactions using Internet-authorized payment alternatives, and (3) substitute electronic transfers for traditional account transfers.

This bill would also authorize all records required by these provisions to be retained and transmitted to the commissioner in an electronic format. The bill would require that a person possessing knowledge and understanding of the Escrow Law, regulations, and accounting regarding personal property, to be on duty at each business location of a licensed Internet escrow agent corporation during business hours for escrows involving personal property.

The people of the State of California do enact as follows:

SECTION 1. Section 17003 of the Financial Code is amended to read:

17003. (a) "Escrow" means any transaction in which one person, for the purpose of effecting the sale, transfer, encumbering, or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other



thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by that third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter.

(b) With regard to Internet escrow companies, “escrow” also includes any transaction in which one person, for the purpose of effecting the sale or transfer of personal property or services to another person, delivers money, or its Internet-authorized equivalent, to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by that third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter.

SEC. 2. Section 17005.2 is added to the Financial Code, to read:

17005.2. “Business location” and “business office location” mean a facility or other place of business where a person engages in the business of receiving an escrow for deposit or delivery, but does not include a customer contact center.

SEC. 3. Section 17005.3 is added to the Financial Code, to read:

17005.3. “Customer contact center” means a facility operated by an Internet escrow agent that exists solely for the purpose of responding to customer electronic messages and telephone inquiries; provided, that no receipt or disbursements relating to an escrow are made from the facility; and provided further, that any documentation or other material generated, transmitted, or otherwise sent from the facility can be reviewed at any time from the business location of the Internet escrow agent.

SEC. 4. Section 17200.8 of the Financial Code is amended to read:

17200.8. (a) Within the organization of each escrow agent corporation, either as an owner, officer, or



employee, there shall be one or more persons possessing a minimum of five years of responsible escrow or joint control experience to be stationed at the main office of the corporation and one or more persons possessing a minimum of four years of responsible escrow or joint control experience stationed at each branch. At least one such qualified person shall be stationed on duty at each business location licensed by this division during the time the location is open for business. A person who has satisfied educational requirements established by the commissioner may substitute education for up to one year of experience.

(b) Subdivision (a) does not apply to an Internet escrow agent with respect to escrows involving personal property. However, within the organization of each Internet escrow agent corporation engaged in the business of an escrow involving personal property, either as an owner, officer, or employee, one or more qualified persons shall possess knowledge and understanding of the Escrow Law (as set forth in Division 6 (commencing with Section 17000)), the rules promulgated thereunder, and accounting so that, among other things, appropriate books and records are used and maintained in order to account for escrows involving personal property. At least one qualified person shall be on duty at each business location of an Internet escrow agent licensed by this division when operations are being conducted that require knowledge of accounting and the Escrow Law and regulations. An Internet escrow agent shall notify the commissioner of the daily business hours during which those operations are to be conducted.

SEC. 5. Section 17403.5 is added to the Financial Code, to read:

17403.5. (a) All records required by this chapter may be retained by an Internet escrow agent and provided to the commissioner in electronic format.

(b) All transfers by an Internet escrow agent between trust accounts and interest-bearing accounts, and between escrow accounts, may be made electronically.



(c) A statement of account may be delivered by an Internet escrow agent to a customer by electronic mail or via the Internet, unless otherwise requested by the customer.

SEC. 6. Section 17409.1 of the Financial Code is amended to read:

17409.1. (a) Each person subject to this chapter shall maintain separate escrow trust accounts for each licensed location. Transfers between accounts are prohibited except by the actual writing of a check from one escrow to the other, and by depositing the check for the account of, and the writing of a receipt for the escrow to which the funds are being transferred. Each transfer shall be properly supported and documented in escrow files by inclusion of escrow instructions executed by the principals authorizing the transfer.

(b) With regard to Internet escrow companies, transfers to trust accounts by commercial banks and from operating accounts to cover losses may be made through wire transfer. Receipts for all these transactions may be maintained in electronic form.

Approved _____, 2000

Governor

;

